

ESTTA Tracking number: **ESTTA485019**

Filing date: **07/23/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197706
Party	Defendant Tamara Jane Strandberg dba Ink and Iron
Correspondence Address	CHRISTOPHER J PALERMO HICKMAN PALERMO TRUONG & BECKER LLP 2055 GATEWAY PLACE, SUITE 550 SAN JOSE, CA 95110 UNITED STATES trademarks@hptb-law.com
Submission	Motion to Amend Application
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Signature	/ChristopherJPalermo/
Date	07/23/2012
Attachments	0011-91197706-mot-amend-w-agmt.pdf ( 10 pages )(656457 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL & APPEAL BOARD**

KEEN ENTERTAINMENT LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/197,706
	)	
STRANDBERG, TAMARA JANE	)	Serial No. 77/896,745
Applicant	)	
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**MOTION TO AMEND APPLICATION AND  
SUSPEND OPPOSITION PROCEEDING**

Applicant Tamara Jane Strandberg with consent of the Opposer hereby moves for an order granting (i) the amendment of the recitation of services in Applicants' pending application Serial No. 77/896,745 ("Applicants' Application"), and (ii) the suspension of the Opposition proceedings. In support thereof, Opposer and Applicants state as follows:

1. The parties have entered into an agreement, pursuant to which the parties have agreed, among other things, to move for an order from the Trademark Trial and Appeal Board to amend the recitation of services set forth in Applicants' Application and to dismiss the opposition upon entry of the amendment.

2. The parties request an Order granting the amendment of the recitation of goods set forth in Applicants' Application as follows:

IC 016. (Based on Use in Commerce) Christmas cards; Greeting cards; Greeting cards having a Christian message; Holiday cards; Note cards; Occasion cards

(Based on Intent to Use) ~~Announcement cards; letterpress printed, digitally printed, and electronic invitations, announcements, and greeting cards; notepads; recipe cards; Coasters made of paper; Correspondence cards; Gift wrap paper; Gift wrapping paper; Gift-wrapping paper; Invitation cards; Printed invitations; Social note cards; calendars; personal stationery; business stationery; paper plates, cups and napkins; all featuring designs unrelated to: tattoos; tattoo art; hot rods; custom or "kustom" vehicles and their parts and accessories; pinstriping of vehicles;~~

pin-up and/or corseted girls; pole dancing; burlesque and cabaret; “retro” or “vintage” fashion; vintage hairstyles including pompadours, mohawks, and fashion mullets; “retro” or “vintage” culture and cultural icons; Americana; music; and the lifestyle(s) associated with said genres; but including the graphical depiction of musical notes, musical symbology, and/or other aspects of performing or enjoying music, and not containing, in the form of ornamental use or as a design element of or on the goods, the mark INK&IRON, INK-N-IRON or any mark that is confusingly similar thereto.

IC 040. US 100 103 106. G & S: Letterpress printing

3. The consent of Opposer to the within amendment is of record in the form of the parties’ signed agreement, a copy of which is submitted concurrently herewith. The entry of an Order for such amendment is proper as (a) Applicants and Opposer each hereby consents to such amendment, and (b) such amendment to Applicants’ Application limits the original identification of goods. Trademark Trial and Appeal Board Manual of Procedure §514.01 and §514.02; 37 C.F.R. 2.71(a).

4. The parties also request an Order suspending this opposition proceeding pending the entry of the amendment requested herein and for other settlement purposes.

Dated: July 23, 2012

Respectfully submitted,

TAMARA JANE STRANDBERG

By /ChristopherJPalermo#42056/

Hickman Palermo Truong Becker Bingham Wong LLP  
1 Almaden Boulevard – Floor 12  
San Jose, CA 95113  
Tel. (408) 414-1080 ext. 202

Attorneys for Applicants

CERTIFICATE OF MAILING

I hereby certify that a true and complete copy of the foregoing Motion to Amend Application and Suspend Opposition Proceeding has been served on Opposer, Keen Entertainment LLC by and through its counsel of record, by United States First Class Mail, with postage affixed thereon and fully prepaid, on July 23, 2012 to:

Arash Samadani  
Samadani Law AOC  
2070 N. Tustin Avenue  
Santa Ana, CA 92705-7827

By /ChristopherJPalermo  
Christopher J. Palermo

60226-0012

## CO-EXISTENCE AGREEMENT

This agreement ("Agreement") is entered into as of November 1, 2011 ("Effective Date"), by and between Keen Entertainment LLC, a Delaware limited liability company having a place of business at 16478 Beach Blvd., Suite 316, Westminster, California ("Keen" herein), and Tamara Jane Strandberg, an individual doing business as INK&IRON and having a place of business at 3325 St. Andrews Drive, Port Huron, MI 48060 ("Strandberg" herein).

### RECITALS

A. WHEREAS, Strandberg has commenced use and owns or has filed certain trademark applications in the United States and other jurisdictions requesting registration of the mark "INK&IRON" in association with certain goods and services;

B. WHEREAS, Keen has commenced use and owns or has filed certain trademark applications or registrations in the United States and other jurisdictions relating to the mark "INK-N-IRON"; and

C. WHEREAS, Keen has opposed US trademark application 77896745 of Strandberg in a proceeding styled Opposition No. 91197706, Strandberg has filed a Counterclaim, and the parties desire to establish mutually acceptable terms for concurrent use of their respective marks, co-existence with respect to trademark use and registration, and compromise and release of claims.

NOW, THEREFORE, based on the foregoing premises and the promises set forth below, the parties hereto agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

For the purpose of clearly stating the terms of the parties' Agreement herein, and not for the purpose of defining either party's past or present ownership of trademark rights, the following terms shall have the following meanings:

1.1 "Strandberg Field of Use" means letterpress printed, digitally printed, and electronic invitations, announcements, and greeting cards; wrapping paper; notepads; recipe cards; coasters; calendars; personal stationery; business stationery; paper plates, cups and napkins; all featuring designs unrelated to the Keen Themes as defined herein, but including the graphical depiction of musical notes, musical symbology, and/or other aspects of performing or enjoying music, and not containing, in the form of ornamental use or as a design element of or on the goods, the Strandberg Marks, the Keen Marks, or any mark that is confusingly similar to the Keen Marks.

1.2 "Keen Themes" means tattoos; tattoo art; hot rods; custom or "kustom" vehicles and their parts and accessories; pinstriping of vehicles; pin-up and/or corseted girls; pole dancing; burlesque and cabaret; "retro" or "vintage" fashion; vintage hairstyles including pompadours, mohawks, and fashion mullets; "retro" or "vintage" culture and cultural icons; Americana; music; and the lifestyle(s) associated with said genres.

1.3 "Strandberg Marks" means the term "INK&IRON" in which an ampersand character ("&") is between the words "ink" and "iron", but without any limitation on the form of capitalization, font or typestyle, including United States Trademark Application 77896745 and each other application or registration for the word "INK&IRON" that Strandberg has filed or files in the future in any jurisdiction, but subject to the limitations set forth in Section 2.2 of this Agreement.

1.4 "Keen Marks" shall mean the term "INK-N-IRON" in which an "N" or "n" character is between the words "ink" and "iron", but without any limitation on the form of capitalization, font or typestyle, United States application 85189804 and each other application or registration for the word INK-N-IRON that Keen has filed or files in the future in any jurisdiction, but subject to the limitations set forth in Section 3.2 of this Agreement.

1.5 "Design element of or on the goods" shall mean use as a decorative feature of or on the goods themselves, and excludes use as a brand on or in tags, labels, or packaging.

## 2. STRANDBERG'S RIGHTS AND OBLIGATIONS

2.1 Amendment of Application and Dismissal of Counterclaim. Within 14 days after the full execution of this Agreement, Strandberg shall (a) amend US application 77896745 to conform the identification of goods and services to the Strandberg Field of Use; and within five (5) days of receiving notification that the USPTO has entered the amendment, file a consent motion for dismissal of the Counterclaim for cancellation filed in response to Opposition No. 91197706 based upon settlement, and shall transmit a proof of service of the filing of the motion to Keen's counsel of record by e-mail.

2.2 Limitation of Use and Registration. Strandberg shall not use or apply to register, anywhere in the world: (a) the word INK&IRON or any sign or design containing or comprising the word INK&IRON, or any word(s) confusingly similar to any of the Keen Marks, except in relation to the Strandberg Field of Use; (b) the word INK-N-IRON, or any sign containing or comprising the word INK-N-IRON, or any of the Keen Marks. Strandberg shall also not utilize, in ornamental use or as a design element of or on any goods, the Strandberg Marks, the Keen Marks, or any mark that is confusingly similar to the Keen Marks.

2.3 Letters of Consent. Strandberg shall provide Keen with letters of consent in relation to the use and registration of the trademark INK-N-IRON outside the Strandberg Field of Use in any jurisdiction in which a refusal of registration to Keen occurs due to prior Strandberg Marks or in which such letters may be necessary or desirable to Keen for the purpose of obtaining trademark registrations free of conflicts with prior Strandberg Marks, within a reasonable time

after receiving a written request from Keen. A letter of consent bearing an original signature shall be provided if reasonably requested by Keen, for example, to conform to legal requirements of a particular jurisdiction. Each letter of consent shall be expressed in a form that Keen shall provide and that is appropriate or reasonably required by the laws of a particular jurisdiction.

2.4 Interference with Application and Registration. Strandberg shall not commence any legal actions, opposition or cancellation proceedings in any jurisdiction with respect to any use, application to register, or registration of Keen for the Keen Marks in relation to goods or services that are outside the Strandberg Field of Use.

### **3. KEEN'S RIGHTS AND OBLIGATIONS**

3.1 Dismissal of Opposition. Within 5 business days after Strandberg fully performs her obligations under Section 2.1 of this Agreement and the USPTO enters the subject amendment, Keen shall file a consent motion for dismissal of Opposition No. 91197706 based upon settlement and shall transmit a proof of service of the filing of the motion to Strandberg's counsel of record by e-mail.

3.2 Limitation of Use and Registration. Keen shall not use or apply to register, anywhere in the world: (a) the word INK-N-IRON or any sign containing or comprising the word INK-N-IRON in relation to the Strandberg Field of Use; (b) the word INK&IRON, or any sign containing or comprising the word INK&IRON, or any of the Strandberg Marks.

3.3 Letters of Consent. Keen shall provide Strandberg with letters of consent in relation to the use and registration of the trademark INK&IRON in relation to the Strandberg Field of Use in any other jurisdiction in which a refusal of registration to Strandberg occurs due to prior Keen applications or registrations or in which such letters may be necessary or desirable to Strandberg for the purpose of obtaining trademark registrations free of conflicts with prior Keen applications or registrations, within a reasonable time after receiving a written request from Strandberg. A letter of consent bearing an original signature shall be provided if reasonably requested by Strandberg, for example, to conform to legal requirements of a particular jurisdiction. Each letter of consent shall be expressed in a form that Strandberg shall provide and that is appropriate or reasonably required by the laws of a particular jurisdiction.

3.4 Interference with Application and Registration. Keen shall not commence any legal actions, opposition or cancellation proceedings in any jurisdiction with respect to any use, application to register, or registration of Strandberg for the Strandberg Marks so long as they are limited wholly to the Strandberg Field of Use.

### **4. NO ADMISSIONS**

Each party understands and agrees that neither the execution nor delivery of this Agreement by any party is an admission of the scope of ownership of trademark rights before the Effective Date or of any wrongdoing whatsoever.

## 5. REPRESENTATIONS AND WARRANTIES

Each individual signing this Agreement hereby warrants and represents that he or she has the full authority to execute it on behalf of the party on whose behalf he or she so signs and that all actions taken by him or her are within the scope of such authority. Each party hereby represents and warrants that all necessary corporate and legal actions to approve the making and execution of this Agreement have been taken and no further action is required, and that the making and execution of this Agreement does not violate any provision of law or of its articles of incorporation and bylaws or other charter documents.

## 6. TERM AND TERMINATION; DISPUTE RESOLUTION

6.1 This Agreement will commence as of the Effective Date and remain in effect until terminated by either party in accordance with this Section. Subject to compliance with Section 6.2, this Agreement may be terminated by either party immediately upon written notice if the other party breaches any material provision of this Agreement and fails to cure such breach within 30 days after receipt of written notice of such breach.

6.2 Dispute Resolution – The Parties irrevocably agree that any and all disputes arising out of or relating to this Agreement, or the alleged breach hereof, or in any way relating to the subject matter of this Agreement or the relationship between the Parties created by this Agreement (hereafter a “*Dispute*”) shall be resolved as follows:

(a) Good Faith Negotiation. The Parties agree that, except as set forth in section “(c)” below, before resorting to any formal dispute resolution process concerning any Dispute, they will first attempt to engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. Party-principals agree to participate directly in the negotiations. Unless otherwise agreed in writing, the Parties shall have five (5) business days from the date the questioning party gives Notice (defined below) of the particular issue to begin these negotiations and 15 business days from the Notice date to complete these negotiations concerning the Dispute.

(b) Mediation – If the negotiation provided for in subsection “(a)” above does not conclude with an agreement resolving the dispute between the Parties, the Parties will submit to mediation administered by a single member (“*Mediator*”) of the Panel of Neutrals of the International Trademark Association (“*INTA*”) according to the rules of mediation of that Mediator that are then currently in effect, provided that (i) each Party shall be represented in mediation by its principal, chief executive officer, managing member, or the next highest ranking officer of the Party, and (ii) if any Party is entitled to present the oral testimony of witnesses as to fact and expert witnesses, then each Party will be entitled to question directly any witnesses who present testimony and at the request of any Party, a written transcript will be made of each hearing or conference at which testimony is presented and will be furnished to the Parties. The Mediator shall be an attorney at law duly licensed to practice law in the United States. If the Parties cannot agree upon the Mediator, each Party shall select one name from a list of neutrals maintained by the INTA; the two selected neutrals shall select a qualified third party to act as the Mediator. The seat of the arbitration will be Los Angeles County, California.



The mediation will be conducted solely in English and any award of money shall be rendered solely in U.S. Dollars. The Parties shall bear their own costs in any mediation hereunder and shall equally share all fees or costs charged by the Mediator. The Mediator will make all reasonable efforts to render a final award, addressing all of the issues in the dispute, within 120 days of the appointment of the Mediator, unless the Mediator determines that there is good cause for extending this period; provided, however, that the award will not be invalid solely because it is rendered after this period.

(c) Provisional Measures – Nothing in this Section 6.2 will prevent either Party from seeking or obtaining relief in the form of provisional or conservatory measures (including, without limitation, preliminary injunctions and specific performance to prevent breaches hereof) in a court of competent jurisdiction; provided, however that no Party will undertake any proceeding designed to divest the Mediator of their jurisdiction.

## 7. GENERAL

7.1 Further Documents. The parties agree to take any further actions and execute any further agreements reasonably necessary to carry out the intent of this Agreement.

7.2 Jurisdiction and Venue – The Parties irrevocably elect and each Party irrevocably submits to the non-exclusive jurisdiction of the state and federal courts located in Los Angeles County, California for the purpose of any suit, action or proceeding, and each Party irrevocably waives any objections to the venue of any such suit, action or proceeding in any such court, and further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

7.3 Costs. Each party shall bear its own direct and indirect costs arising from or relating to preparation, execution, performance and delivery of this Agreement.

7.4 Notices. All notices required or permitted under this Agreement must be in writing, must reference this Agreement and will be deemed given: (a) 5 business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (b) one working day after delivery to a commercial overnight carrier, with written verification of receipt. All communications must be sent to the contact information set forth below or to such other contact information as may be designated by a party by giving written notice to the other party pursuant to this Section:

To Strandberg:

Tamara Jane Strandberg, 3325 St. Andrews Drive, Port Huron, MI 48060

To Keen:

Keen Entertainment LLC, 16478 Beach Blvd., Suite 316, Westminster, California 92647 with a copy to Arash Samadani, Samadani Law, APC, 2070 N. Tustin Ave., Santa Ana, California 92705 and [as@samadanilaw.com](mailto:as@samadanilaw.com)

7.5 Waiver and Modification. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment, supplementation or other modification or supplementation of any provision of this Agreement will be effective only if in writing and signed by both parties.

7.6 Severability. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue unmodified except as necessary to avoid unfairness.

7.7 Assignment. This Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assignees, licensees, or franchisees. Within five (5) business days after closing any assignment, or sale of all or substantially all of a party's assets, the assigning party shall give written notice to the other party.

7.8 Relationship of Parties. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of legal association between the parties and each party is an independent contractor.

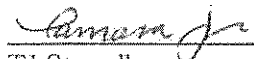
7.9 Entire Agreement. This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof and supersede any and all prior correspondence, quotations and negotiations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned, duly authorized representatives as of the Effective Date. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of which constitute one and the same agreement.

"STRANDBERG"

Tamara Jane Strandberg

BY

  
TJ Strandberg

DATE

11-17-2011

"KEEN"

Keen Entertainment LLC

BY

NAME \_\_\_\_\_  
TITLE \_\_\_\_\_

DATE

\_\_\_\_\_

7.5 Waiver and Modification. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment, supplementation or other modification or supplementation of any provision of this Agreement will be effective only if in writing and signed by both parties.

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7.8 Relationship of Parties. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of legal association between the parties and each party is an independent contractor.

7.9 Entire Agreement. This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof and supersede any and all prior correspondence, quotations and negotiations.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned, duly authorized representatives as of the Effective Date. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of which constitute one and the same agreement.

"STRANDBERG"  
Tamara Jane Strandberg

BY \_\_\_\_\_  
TJ Strandberg

DATE \_\_\_\_\_

"KEEN"  
Keen Entertainment LLC

BY   
NAME Trace Lee Edwards  
TITLE managing member

DATE 11-17-11